

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 1463 of 1997

in

SPECIAL CIVIL APPLICATION No 8233 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL and
MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

STATE OF GUJARAT

Versus

MA PATEL

Appearance:

MR SP HASURKAR for Appellants

MR RM CHHAYA for Respondent No. 1, 2, 3, 4, 5, 6

CORAM : MR.JUSTICE B.C.PATEL and
MR.JUSTICE A.L.DAVE

Date of decision: 08/02/99

ORAL JUDGEMENT (Per Patel, J.)

State has filed this appeal being aggrieved by the judgment passed by learned Single Judge in Special Civil Application No. 8233 of 1995, whereby the respondents were permanently restrained from recovering

the different amount of selection grade from the original petitioners.

2. Heard learned advocate Mr. Hasurkar for appellants and Mr. Chhaya for respondents.

2.1 In the year 1991 the appellant realised that by mistake selection grade and emoluments attached thereto were given to the petitioners, but action for recovery of the amount so paid to the original petitioners was initiated only in the year 1995. The benefit was given to the original petitioners in 1980, 1981 and 1982 by mistake which was brought to the notice of the concerned authority in 1991, but no action was taken soon thereafter.

3. It is admitted that the petitioners were not entitled to get selection grade; Yet, the officer/s concerned granted the benefit. Mr. Hasurkar, learned advocate appearing for the appellants states that the benefit was given by the Government. One has to realise that orders are passed by officers of the Government and such orders are given effect. Thus, it is the officers who have wrongly given the benefit and they should have been held responsible. Atleast the officer whose attention was drawn for the mistake in 1991 but has not taken any action for recovery till 1995 should have been held responsible for the loss of revenue.

4. Learned Single Judge found that the respondents herein never claimed selection grade. They did not even apply for the same. Order Annx. 'F' to the petition clearly reveals that selection grade was fixed in accordance with government circulars and the pay was fixed as per letter dated 15/11/1973. Thus, the officer on his own considered the subject of selection grade and extended the benefit. It is not the case of a mis-representation by employees for seeking the benefit.

5. We called upon Mr. Hasurkar to give details about the officers who were responsible for extending the benefit of selection grade though the petitioners were not entitled, but Mr. Hasurkar was not in a position to give the names. He stated that all of a sudden he cannot give the names, and to an extent he is right.

6. In the aforesaid circumstances, we do not find any reason to interfere with the judgment passed by the learned Single Judge. Thus, this appeal is required to be dismissed, and is hereby dismissed. Notice is discharged. No order as to costs.

7. At the same time, we direct the State to initiate an inquiry to find out erring officer and if found responsible to recover the amount from the erring officer/s after giving an opportunity and to report to this Court about the action taken in the matter within a period of three months, without fail. For this purpose, this matter shall be notified before us on 8.4.1999.

csm./ -----